

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.64 OF 2006

Prabhakar Uttam Patil ...Appellant

Vs.

Mangalabai Himmat Bacchav & Ors. ...Respondents

Mr.Anilkumar Patil for the Appellant
Mr.M.G.Heblikar for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: APRIL 13, 2006.

P.C.:

1. Heard Advocates for the parties. The Appellant is the obstructionist who applied under Order 21 Rule 97 of the Code of Civil Procedure, 1908 for adjudication of his rights. An execution application was filed by the Respondent No.1 for executing the decree for possession. According to the case of the Appellant, in the year 1990, his father acquired the property from original Judgment Debtor No.6 Bismillabai on lease and in the year 1993 the father purchased the property from the said Judgment Debtor. The suit filed by the Respondent No.1 was decreed on 15th October 2000.

2. Shri Patil for the Appellant submitted that the Appellant was not permitted to lead any evidence and in fact the Appellate court went to the extent of observing that the Appellant was not entitled to file the application. He

submitted that the Appellant ought to have been permitted to lead evidence.

3. I have considered the submissions. The Appellant is claiming through his father. On his own showing the Appellant's father acquired the property from one of the Judgment Debtors during the pendency of the suit. It is also an admitted position that the Appellant's mother filed an Obstruction Application which was adjudicated upon by the executing court after permitting the parties to lead evidence. The Obstruction made by the mother of the Appellant was ordered to be removed and the said order was confirmed in Appeal. It is pertinent to note that the Appellant's mother also claimed through her husband i.e. the Appellant's father on the basis of the same document. Considering these facts, the Courts below came to the conclusion that the Appellant was claiming through Judgment Debtor.

4. In view of the factual position, no fault can be found with the impugned Judgments and orders. There is no substantial question of law. Second Appeal is dismissed with no order as to costs.

Judge .